MOHD. SHUKRI MOHD. TAIB

v.

THE CHIEF POLICE OFFICER OF THE STATE OF KELANTAN

HIGH COURT MALAYA, KOTA BHARU
MOHD. ZAHIR ISMAIL J
[ORIGINATING MOTION NO. 6 OF 1982]
19 MAY 1982

CIVIL PROCEDURE: *Application for writ of Habeas Corpus - Unlawful detention - Whether arrest justified - Question of mala fide, or otherwise illegal.*

The applicant applied for a writ of *Habeas Corpus* on the ground that he was unlawfully detained.

The respondent by an affidavit sworn through Salamuddin bin Hj. Falizan, a DSP justified the detention in that:

(i) the arrest was made under s. 73(1) of the Internal Security Act 1960 (ISA) on the authorisation of one Insp. Razlan bin Abu Bakar;

(ii) authorisation dated 26 March 1982 by Hasanudin bin Hasan, an ASP that the applicant be detained for a period of 28 days from the date thereof in compliance with s. 73(3)(b) of the ISA;

(iii) authorisation dated 22 April 1982 by Salamuddin bin Haji Falizan, Ag. DSP detaining the applicant for 30 days from the date of authorisation in compliance with s. 73(3)(c) of the ISA.

Counsel for the applicant *inter alia* submitted that the order was not signed by the Minister under s. 8 and quoted several cases in support of his contention.

Held:

[1] The cases quoted by the applicant's Counsel were in relation to order made under s. 8 by the Minister. The instant case had not yet proceeded up to the stage where the Minister had to make or to refuse making the order. It was still in the investigation stage under s. 73. The date of detention being 24 April up to the date of hearing (10 May) was about 16 days and therefore was still within the period envisaged under s. 73(3)(c) of the Internal Security Act 1960.

[2] As to time taken for investigation, the applicant had no merit on this point. Time was normally required for the compliance of any course of action to be taken before the Minister finally decides whether to issue the order of detention under s. 8 or set him free.

[3] The applicant had failed to show that the power of detention was exercised *mala fide* or improperly and accordingly the application was dismissed.

[Application dismissed.]

Cases referred to:
Lim Hock Siew & Ors. v. The Minister of the Interior & Defence [1968] 2 MLJ 219
Zainab binti Othman v. Superintendent of Prisons, Pulau Jerejak [1975] 1 MLJ 76
Che Su binti Shafie v. Superintendent of Prisons, Pulau Jerejak [1974] 2 MLJ 194
Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129

Legislation referred to:
Internal Security Act 1960, ss. 73(1), (3)(a), (b), (c)

For the applicant - H.L. Wrigglesworth; M/s. Wrigglesworth & Co.
For the respondent - Zaki Tun Azmi; SFC

JUDGMENT

Mohd. Zahir Ismail J:

The applicant applies for a Writ of *Habeas Corpus* on the ground that he was unlawfully detained.

The respondent *vide* affidavit sworn by Salamuddin bin Haji Falizan, a Deputy Superintendent of Police attached to the Kelantan Police Contingent gave the following facts justifying the detention:

(i) The arrest made under s. 73(1) of the Internal Security Act 1960 (ISA) was authorised by one Inspector Razlan bin Abu Bakar (a copy of the said authorisation was annexed) in compliance with s. 73(3)(a) of ISA.

(ii) Authorisation dated 26 March by Hasanudin bin Hasan an Assistant Superintendent of Police that the applicant be detained for a period of 28 days from the date of such authorisation in compliance with s. 73 (3) (b) of ISA.

(iii) Authorisation dated 22 April by Salamuddin bin Haji Falizan, Ag. Deputy Superintendent detaining the applicant for 30 days from the date of authorisation in compliance with s. 73(3)(c) of ISA.

A report of the applicant's arrest was made vide Kota Bharu Police Report No. 1746/82 and immediately after his arrest a signal was sent to the Inspector General of Police the fact of the arrest by the said DSP Salamuddin in compliance with s. 73(3)(c) of ISA.

It appears to me from the above the respondent has justified the arrest and it is for the applicant to prove that the arrest was made *mala fide* or improperly or otherwise illegal.

Counsel for the applicant submitted that the order was not signed by the Minister under s. 8 and quoted *Lim Hock Siew & Ors. v. The Minister of Interior & Defence* [1968] 2 MLJ p. 219; *Zainab binti Othman v. Superintendent of Prisons, Pulau Jerejak* [1975] 1 MLJ 76 and *Che Su binti Shafie v. Superintendent of Prisons, Pulau Jerejak* [1974] 2 MLJ 194. But it appears the cases quoted were in relation to order made under s. 8 by the Minister. The instant case has not yet proceeded up to the stage where the Minister has to make or to refuse making the order. It is still in the investigation stage under s. 73. From 24 April, the date of detention up to the date of hearing (10 May) is about 16 days and therefore still within the period envisaged under s. 73(3)(c) of ISA. The relevant question is whether all the acts under s. 73(3)(a), (b) and (c) by the respondent are illegal.

Counsel for the applicant submitted further that the date on Exh. SF1 being 22 March whereas the date of detention was 24 March and the investigations ought to have been completed long ago as the applicant had been long in custody even before the arrest.

Counsel for the respondent pointed out that the date 22 March in SF1 was a genuine mistake as the stamped date and also the date appearing on the right bottom of SF1 were correctly disclosed as being 24 March. I think this is a reasonable explanation and which I accept.

As to time taken for investigation, I do not think the applicant has any merit on this point. Time is normally required for the compliance of any course of action to be taken before the Minister finally decides whether to issue the order of detention under s. 8 or set him free.

In *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 it was held that it was for the subject to show the power of detention was exercised *mala fide* or improperly. I think the applicant has failed to do so.

So I dismiss the application.

Also found at [1983] 1 CLJ 207